STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings in the State Capitol, Room 416 North, Madison, Wisconsin on July 29, 1999, upon the following claims:

Claimant	Agency	Amount
1. Robert Stobb	Department of Administration	$330.00
2. Dean Rahn	Department of Corrections	$3,169.50
3. David M. Stasik	Department of Employe Trust Funds	$?
4. Rodney & Nadine Figueroa	Dept. of Ag. Trade & Consumer Protection	$2,500.00
5. Randolph & Karen Sedlac	Department of Revenue	$5,768.35
6. Ronald J. Stanek	Department of Revenue	$18,064.78
7. Stanley J. Meyer	Department of Transportation	$12,922.63

In addition, the following claims were considered and decided without hearings:

Claimant	Agency	Amount
8. Rosendale Farm Equiptment, Inc.	Department of Administration	$49,776.35
9. Kevin J. Budden	Dept. of Ag. Trade & Consumer Protection	$99.72
10. Gunnard Landers	Department of Financial Institutions	$370.00
11. Bernice Northam	Department of Revenue	$977.46
12. Cory Prescott	Department of Corrections	$1,005.00
13. Daniel P. Droessler	Department of Natural Resources	$2,593.64
14. Dave Habeck	Department of Natural Resources	$320.00
15. Roseann Rossing & Eric Mallon	Department of Natural Resources	$1,150.32
16. David M. Rusch	Department of Natural Resources	$1,511.75
17. Mark Sweet	University of Wisconsin	$413.14
18. Beth Timm	University of Wisconsin	$84.80
19. Brian L. Dain	Winnebago County District Attorney	$1,577.45
20. Alla Y. Likhterev	Department of Health and Family Services	$1,151.06

The Board Finds:

1. Robert Stobb of Oshkosh, Wisconsin claims $330.00 for damage to his garage door. In April 1999, the claimant was driving a DOA Fleet vehicle equipped with a 3' x 5' trailer. The claimant states that while he was backing into his driveway, he misjudged the overall length of the vehicle and trailer and backed into his garage door, causing damage to the door. The claimant believes he should be reimbursed for the cost of fixing the garage door, since the damage occurred while he was driving a DOA vehicle. The DOA recommends denial of this claim. It is apparent that the damage to the claimant's garage door was caused by his own "misjudgment." While the claimant may have an insurance claim, the DOA does not believe there is any liability on the part of the state for self inflicted damage to the claimant's property, accidental or otherwise. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

2. Dean Rahn of Beaver Dam, Wisconsin claims $3,169.50 for legal fees and lost wages allegedly related to his employment at Fox Lake Correctional Institution. Another FLCI employe, Thomas Patzer, began stalking the claimant's wife. Ms. Rahn identified Mr. Patzer from a photo line-up and, at FLCI's request, provided a written statement related to her identification of Mr. Patzer. This eventually led to a restraining order against Mr. Patzer. Mr. Patzer discovered Ms. Rahn's involvement and subsequently sued her. The suit was dismissed with prejudice and without costs, however, the Rahns incurred legal fees defending Ms. Rahn from the lawsuit. The Department of Justice notified the claimant's insurance company, but they denied coverage for the legal costs because they believed it was not covered under the Rahn's policy. The DOJ had been initially informed of the lawsuit, however, because of a severe time restriction in developing and submitting a timely response to the Court, it became necessary for the Rahns to obtain their own counsel. Further, they were not made aware of the need to notify the DOJ to provide representation and were not told that the DOJ would be able to provide said representation (because of the initial belief that their homeowners insurance would cover representation costs). The claimant requests payment of legal costs and lost wages caused by this incident. The DOC agrees with the statement of facts contained in the claim. The claimants incurred these legal expenses only because Mr. Rahn works for the DOC and Ms. Rahn testified in support of the Department's position in a litigation situation. The DOC feels that it cannot allow correctional officers and their families to bear the burden of legal expenses they incur solely and directly because they work for the DOC. Not only would this be unfair, it would undermine officer morale and actually further the plaintiff's interest in the lawsuit (by damaging the officer and his family). However, the DOC does not support payment of Ms. Rahn's lost wages. Witness fees compensated for any wages she lost due to testifying. All citizens have a duty to present their testimony to assist the courts in providing justice and witnesses are routinely given token compensation for carrying out their civic duty. The DOC supports payment of the legal fees and is also authorized to inform the board that the Department of Justice also supports payment of legal fees in this claim. The Board has determined that $1,500 of the attorney fees has been paid by the claimant with a balance of $1,429.50 outstanding to the attorney. The Board concludes the claim should be paid in the reduced amount of $2,929.50--$1,500 made payable to the claimant and $1,429.50 made payable to the claimant's attorney, Elbert and Pfitzinger, based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., these payments should be made from the Department of Corrections appropriation s. 20.410 (1)(a), Stats.

3. David M. Stasik of Radisson, Wisconsin claims an undetermined amount for damages related to the miscalculation of his retirement benefits by the Department of Employe Trust Funds. In December 1996, the claimant received a retirement benefits estimate and application form from ETF, which stated that he would receive a $2488 per month annuity until he reached age 62, then $1722 per month for life. This estimate was calculated in error by ETF, which gave the claimant credit for 10 more years of creditable service than he had actually earned. In March 1998, ETF discovered the error and notified the claimant that his annuity would be cut by over $500 per month and that he had to repay ETF $7074.74. The claimant states that this has caused him great financial hardship. He disputes ETF's assertion that he should have suspected that the December 1996 estimates were incorrect, because they differed significantly from earlier benefit estimates. The claimant believes that it is ETF's responsibility to ensure the accuracy of its calculations and does not believe that the average person should be responsible for double checking the accuracy of calculations that ETF admits are extremely complicated. ETF believes that the claimant should have suspected that the annuity estimates were incorrect, but admits that an ETF employe made errors in calculating the claimant's benefit estimates. Despite ETF's admission of the error, Wisconsin Statutes do not allow for payment to the claimant from the Public Employe Trust Fund (see Wis. Stat. s. 40.01 (2)). Furthermore, the Wisconsin Administrative Code s. ETF 11.03 (2)(b), provides that a benefit under Wis. Stat. Chapter 40 may not

be granted by the ETF board, regardless of erroneous or mistaken advice or of any negligence, unless the appellant is eligible for the benefit. ETF is therefore unable to continue to pay the claimant a monthly annuity based on an incorrect number of years of service. The Board concludes the claim should be paid in the amount of $5,000.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Claim Board appropriation s. 20.505 (4)(d), Stats.

4. Rodney and Nadine Figueroa of Cato, Wisconsin claim $2,500.00 for the retail value of the meat from seven elk. The claimants' elk herd was exposed to a herd known to be infected with bovine tuberculosis. Although none of the elk were classified as reactors in early testing, the claimants voluntarily agreed to depopulate their herd. The claimants allege that the DATCP agreed to assist them in finding a purchaser for the meat from the non-reactive animals. The claimants state that the implied sale of the meat from the destroyed animals was a factor in their decision to voluntarily depopulate the herd rather than testing out. Neither the DATCP nor the claimants were able to find a purchaser for the meat. The claimants state that in December 1997, DATCP personnel told them to destroy the animals despite the fact that there was no outlet for sale of the meat because the DATCP had determined that it was unlikely that a purchaser for the meat would be found. The claimants received the standard indemnity for slaughter of the animals. The claimants believe that the sale of the meat was part of their agreement with the DATCP to destroy the animals and they request reimbursement for the amount they would have received if a purchaser for the meat had been found. The claimants request $1 per pound for 2500 lbs. of meat. The DATCP recommends denial of this claim. Bovine tuberculosis cannot be definitively diagnosed until after an animal is slaughtered. Therefore, to clear the animals from a herd of the suspicion that they are infected with bovine tuberculosis, several tests must be performed at the Department's expense and animals that react to the test are required to be slaughtered. In December 1997, the claimants decided to forego the testing option and slaughtered all of their animals. In January 1998, the claimants received the statutory maximum indemnity ($1500 per animal). The Department did seek to help the claimants locate a market for the exposed animals and did eventually identify a facility, however, by the time the purchaser was located, the claimants had already destroyed their animals. The DATCP believes that if this claim is paid, it will create an expectation that anyone who has animals that are exposed to serious diseases can rely on the DATCP to be a market of last resort. The Department is not statutorily required to assure a market for exposed animals and therefore, was not negligent in failing to assure that there would be a market for the claimants' meat. The Board concludes the claim should be paid in the reduced amount of $1,250.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade & Consumer Protection appropriation s. 20.115 (2)(b), Stats.

5. Randolph and Karen Sedlac of Ogdensburg, Wisconsin claim $5,768.35 for reimbursement of overpayment of taxes for 1992 through 1997. Randolph Sedlac became ill several years ago and failed to file tax returns from 1992-1997. Karen Sedlac has a working knowledge of spoken English but has never mastered the written language and was therefore unable to complete the forms. The claimants' daughter states that when she realized that her parents had fallen behind on their business affairs, she began to assist them and discovered the tax notices in their unopened mail. The claimants' daughter states that her father has never been able to cope well with stress and has a history of ignoring problems. The claimants' daughter states that her parents are still working but in difficult financial circumstance due to outstanding medical bills. When the claimants filed the 1992-1997 returns in November 1998, they discovered that that they would have received a small refund if they had filed the returns in a timely manner. They request reimbursement of the $5,768.35 that was garnished from Mr. Sedlac's wages. The DOR recommends denial of this claim. The claimants failed to file income tax

returns for 1992 through 1997. The Department made estimated assessments of their liabilities in October 1994 (1992 assessment), August 1996 (1993 assessment) and September 1997 (1994 and 1995 assessments). In each case the Department sent a bill and sent a notice of the delinquent balance due each month beginning in January 1995. The Department sent a hearing notice in April 1995 but received no response to this notice. In July 1996, the DOR attached Mr. Sedlac's wages. Mr. Sedlac worked in the construction industry, which is subject to seasonal layoffs, so the DOR found it necessary to re-contact employers on several occasions. The claimants were sent another informal hearing notice in August 1997. Mrs. Sedlac called the DOR on September 11, 1997 and promised to file all missing returns by September 30, 1997. On October 14, 1997, a DOR field agent levied an employer because the DOR had received no payment since July 1997 and the claimants had not filed the returns as promised. In November 1998, the claimants filed their income tax returns for 1994 through 1997. These returns had a small balance due which the claimants paid. The 1992 and 1993 returns were filed several days later and indicated a small refund due. Because the 1992 and 1993 returns were filed more than two years past the assessment dates, s. 71.75 (5), Stats., prohibits the DOR from refunding any funds applied to these assessments. The amount of these nonrefundable overpayments is $5,768.35. The Board concludes the claim should be paid in the reduced amount of $3,500.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Claims Board appropriation s. 20.505 (4)(d), Stats.

6. Ronald J. Stanek of Sparta, Wisconsin claims $18,064.78 for refund of overpayment of business taxes for June-December 1991, and January-December 1992. The claimant closed his business in April of 1991. He alleges that he never received the tax estimates sent to him because they were addressed to a Post Office Box in a rural area where his business office had been located. The claimant began working out of his home in 1990 and was no longer using the P.O. Box. He states that he received an assessment letter from DOR in late 1991 and that the letter indicated that he owed approximately $24,000 in estimated taxes, interest and penalties. He claims that he called the DOR and was assured that the assessment would be removed because he had closed his business in April 1991. The DOR began garnishing his paycheck in late 1993. The claimant states that he contacted his accountant, who told him that nothing could be done because the DOR said the taxes were owed. The claimant filed for bankruptcy in 1998. In July 1998, the claimant received a letter from the DOR indicating that he owed $79,644.74 in taxes. The claimant states that he contacted the DOR and was informed that this bill was for estimated taxes dating back to 1991. The claimant received a fax from the DOR showing that he overpaid by $18,064.78. He requests reimbursement of this amount plus compounded interest dating back to 1993. The DOR recommends denial of this claim. In addition to an actual real estate transaction fee liability of $1,323.14, the claimant was issued eight estimated withholding tax assessments between 1991 and 1994. These assessments were sent to the claimant's business address, a Post Office Box, and none were returned as undeliverable. The DOR states that it has no record of the claimant contacting the Department during late 1991, as he states in his claim. The claimant was sent an informal hearing letter on July 14, 1992, and the DOR states that it agreed to suspend collection on the account for two weeks in order to give the claimant time to gather information regarding the assessments. He did not provide the information needed or arrange a payment plan. As a result, the Department began a wage attachment, which continued until 1998, at which time the claimant informed the DOR that he had no employes during the period in question. The remaining estimates were credited at that time. According to the claimant's claim, he had contact with two accounting firms, which must have revealed to him that his tax liability was based entirely on estimates and that adjustments could be made to his account if he provided the necessary information. The Department believes that the claimant was informed in 1992 that the assessments were estimates and was also informed how to rectify the situation. Section 71.75 (5) prohibits refunds on assessments older than two years, therefore the Department recommends denial of this claim. The

Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

7. Stanley J. Meyer of Verona, Wisconsin claims $12,922.63 for lost wages allegedly caused by actions of the DOT. In 1993, the claimant filed a prevailing wage claim with the DOT against his former employer, Jeff's Trucking. His wage claim stated that Jeff's Trucking had not paid him the prevailing wage for state work as required by state law. He alleges that he was put off and his claim not dealt with by the DOT for five years. He further alleges that the DOT settled with Jeff's Trucking, without the claimant's input or agreement, for approximately $1500. The claimant feels that he was not well represented by the DOT and that their inefficiency and failure to pursue his wage claim led to his losses. Section 103.50 (2), Stats., requires a contractor or subcontractor performing work on a state highway construction contract based on bids to pay not less than the prevailing wage rates for employes. Section 103.50 (8), Stats., provides that the DOT shall require adherence to subsection (2), may demand payroll and other records from the contractor, and may request the district attorney to investigate and prosecute violations of the prevailing wage law. The DOT did so in this case and referred the matter to the U.S. Department of Labor (USDL) because of the alleged actions of Jeff's Trucking. The DOT states that most of the delay in this case occurred while the USDL was reviewing the matter. Upon completion of their review, the USDL did not take any action. The DOT then used its resources and entered into mediation with Jeff's Trucking. The DOT also commenced a debarment action, which precluded Jeff's Trucking form entering into state contracts. The Department reviewed information provided by the claimant and appreciated his input. However, the DOT was not authorized to be the claimant's representative, nor did it claim to be in recovering his lost wages. The DOT used its best judgement and entered into a settlement agreement, which resulted in payment of $1508.04 gross wages to the claimant. The claimant was not bound by this agreement and was not precluded from any further action against Jeff's Trucking for any remaining wages allegedly owed. The Board concludes the claim should be paid in the reduced amount of $4,000.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Transportation appropriation s. 20.395 (3)(cq), Stats.

8. Rosendale Farm Equipment, Inc., of Brandon, Wisconsin claims $49,776.35 for additional work done on a building project for the DOA Division of Facilities Development. The claimant states that during the course of the project it was discovered that the bedrock was significantly closer to the surface that had been indicated by the Department's Request For Proposal. Because of the shallow bedrock, the claimant's excavating crew encountered moist soils that would not compact to the 95% maximum density required by the contract. The claimant alleges that DFD employe Tom Rhodes rejected the claimant's suggestion of only removing the small area of substandard soil and instead that the entire construction area be excavated down to bedrock. The claimant further alleges that Mr. Rhodes authorized the claimant to fill the excavated area with material specified by the claimant's engineering consultant. The claimant proceeded to fill the area with the recommended material at an additional cost of $49,776.35 (cost of both the extra fill and extra excavation). The claimant states that although the conditions of the contract specify written change orders, the contract contains no language that would prevent the parties from amending or waiving any term of the contract by their words or actions. The claimant does not believe it should be held responsible for increased construction costs that result from site conditions that differ from those described in the contract documents. DFD recommends denial of this claim. The boring information from the construction area indicated that bedrock existed at greatly varying depths in the vicinity of the construction area (4.8 feet to 7.0 feet). During excavation, the DFD project representative expressed concern about the soils and testing confirmed that the soils were not being compacted to the required density. The

claimant, his excavation subcontractor and the DFD project representative met to discuss available options. The Department alleges that no decisions were made and no authorizations to proceed were given by DFD at or subsequent to this meeting. The DFD states that three days after the meeting, the excavation subcontractor had excavated the site and placed the fill material without DFD's knowledge. The DFD received a written memo from the excavation subcontractor indicating that the claimant's Engineer, Cal Siegel, had directed them to excavate the area and place the fill materials. DFD states that it never authorized any extra work as required by the contract. DFD believes that the claimant and his design engineer made a unilateral decision to proceed without authorization from DFD, therefore, the claim should be denied. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. *(Member Main not participating.)*

9. Kevin J. Budden of Cuba City, Wisconsin claims $99.72 for lost milk allegedly caused by a state inspector. On October 14, 1998, the claimant states that a state inspector failed to properly re-assemble a clamp on some milking equipment. The claimant states that due to this error, 570 lbs. of milk spilled down the drain. The claimant requests reimbursement for this lost milk. While not admitting liability for damages to any milking equipment owned by the claimant, the DATCP will not contest allowance of the claim for milk which was lost due to alleged incorrect assembly of a pipeline clamp by a Department employe. Based on the dollar amount of the claim and the gross amount per hundredweight (cwt.) paid by the claimant's dairy plant ($17.4635) it can be assumed that approximately 5.71 cwt. or 570 pounds of milk was lost. The Board concludes the claim should be paid in the amount of $99.72 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade & Consumer Protection appropriation s. 20.115 (1)(a), Stats.

10. Gunnard Landers of Altoona, Wisconsin claims $370.00 for reimbursement for personal Frequent Flyer miles used for business related travel. The claimant, an employe of the DFI, attended a seminar in Washington DC during December 1998. The claimant states that he used 25,000 Frequent Flyer miles, which had been earned during personal trips, to purchase his ticket to DC. The claimant claims that he purchased more expensive tickets for these personal flights so that he would earn the frequent flyer miles and that they are worth approximately 2 cents per mile. The claimant states that if employes drive their personal vehicles for business trips instead of flying, DFI policy is to reimburse them for the cheapest Saturday flight, not for actual costs incurred driving. The claimant believes his situation is similar. He points to a 1987 DFI memo that encourages employes to take advantage of discounts to obtain travel at the lowest cost to the Department. Although this memo also states that the Department cannot pay employes for miles obtained for merchandise purchases, the claimant contends that his miles cost him extra money because he had to purchase more expensive tickets to get them. After his trip, the claimant submitted an expense voucher requesting $370 reimbursement, the cost of the cheapest Saturday flight. This request was denied. The claimant states that by using his personal miles to obtain his ticket, he saved the state up to $950. The DFI recommends denial of this claim. Section 16.53 (1)(c)(4) of the Wisconsin Statutes states that employe expenses should include only travel expenses actually paid out and requires that no part of such transportation was had upon a free pass or was otherwise free of charge. The Department of Administration's State Controller's Office has stated that because an employe does not incur any out of pocket costs for using personal frequent flyer points to purchase a ticket for state business travel, the employe should not be reimbursed for those points when used for state business travel. The DFI also points to DER's Code of Ethics rule ER-MRS 24.04 (2)(a), which states, "No employe may use or attempt to use his or her public position or state property or use the prestige or influence of a state position to influence or gain

financial or other benefits, advantages or privileges for the private benefit of the employe." The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

11. Bernice C. Northam of Appleton, Wisconsin claims $977.46 for reimbursement of a tax assessment. The claimant is a resident at a tax exempt retirement complex (The Heritage). Although The Heritage is tax exempt, it makes substantial voluntary payments to the City of Appleton in lieu of property taxes. Based on these payments, the claimant (along with other residents of the Heritage) took the $200 school property tax credit on her Wisconsin income taxes for the years 1993-1996. In 1997, the claimant received an assessment disallowing the school property tax credit for those years based on the fact that she "resided in property that was exempt from property taxes." The claimant paid the $977.46 assessment in full and did not file an objection to the assessment within 60 days of the notice. The Department of Revenue later changed its position on tax exempt housing for the years 1996 and earlier, allowing the renter's school property tax credit provided that the property made payments to the municipality in lieu of taxes. The claimant attempted to receive a refund of her assessment payment but was told that she could not receive the refund because she had failed to file an objection to the assessment within 60 days. Other residents of The Heritage have received their refunds and the claimant requests that this money be refunded to her based on equitable principles. The DOR recommends payment of this claim. The Department has determined that the claimant lived in property where payments were made to the municipality in lieu of taxes and tenants were paying rent based on a fair rental value. However, the claimant had previously appealed the assessment and was denied. While the DOR now agrees that the claimant is entitled to a renter's school property tax credit for 1996 and prior, it has no authority to issue such a refund because of its previous appeal denial. The Board concludes the claim should be paid in the amount of $977.46 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Claims Board appropriation s. 20.505 (4)(d), Stats.

12. Cory Prescott of Milwaukee, Wisconsin claims $1,005.00 for reimbursement of medical bills and attorney's fees related to an incident in October 1998. At that time, the claimant was an inmate at Racine Correctional Institution. While eating breakfast, he bit into a stone that was in some scrambled eggs and broke off part of a tooth. The claimant was released two days after the incident and therefore had to have dental work for the injury done at his own expense. He does not have insurance to cover his $255 dental bill. The claimant also requests reimbursement of $750 in attorney's fees related to the filing of this claim. The claimant disputes the Department's assertion that legal counsel was not necessary for the filing of this claim. The claimant was not even aware of the existence of the Claims Board prior to consulting an attorney. The claimant further states that his attorney was needed to examine the Claims Board statutes, research the claims process, and respond to the recommendation by DOC legal counsel. The DOC recommends payment of this claim in the reduced amount of $255. The claimant did damage a tooth on a pebble found in his food at Racine Correctional Institution. Accordingly, the DOC recommends that he be reimbursed for the cost of his dental care. However, the Department opposes the payment of the claimant's $750 legal bill related to this matter. This matter is not so complex or difficult to understand, develop or present that an attorney's assistance was necessary in order for the claimant to file this claim and obtain reimbursement. The Board concludes the claim should be paid in the reduced amount of $255.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Corrections appropriation s. 20.410 (1)(a), Stats.

13. Daniel P. Droessler of Platteville, Wisconsin claims $2,593.64 for uninsured medical expenses and sick leave use related to incident at Governor Dodge State Park in June 1998. The claimant was canoeing at the park and let his foot dangle over the side of the canoe, into the water. A 35.5 inch muskie bit the claimant's foot, causing significant damage. He was treated at the emergency room and later received 60 stitches to close the lacerations. The claimant states that he was unable to walk for a month and had to use 160 hours of sick leave time recovering from his injury. The claimant also states that his life was significantly disrupted by a large number of calls from various media sources. The claimant does not believe the average person would have ever considered it dangerous to put their foot in a public lake and he does not believe that he should bear the expense for this freak event. He requests reimbursement of his $25 uninsured medical expenses and $2,568.64 for his 160 hours of sick leave. The The DNR regrets that the claimant was injured as a result of this highly unusual occurrence, however, it does not believe it is responsible for payment for the use of sick leave and other losses resulting from a person being bitten by a fish. Section 895.52, Stats., provides that the state has no liability to persons engaged in recreational activities, such as boating, on state property, in the absence of a malicious act or failure to warn against known, unsafe conditions in areas designated for recreational activity. Although the DNR has the power to protect, conserve, and regulate the taking, use and disposition of wild animals, including fish, this does not create legal liability for damages caused by wild animals. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

14. Dave Habeck of Merrill, Wisonsin claims $320.00 for eyeglasses allegedly lost due to the negligence of a DNR Warden. The claimant was ice fishing and had erected a portable fishing shack on the lake. He states that he had been wearing his glasses (he needs them to drive) but that he had taken them off when he went into the shack because it takes a few moments for his Transition lenses to shift from dark to light. He states that he set the glasses down on a makeshift table in the shack. The claimant states that he was inside the shack when a DNR Warden walked into the shack without warning and knocked over the makeshift table. The Warden caught claimant with too many fishing lines. The claimant states that because he was dealing with the Warden he did not notice right away that his glasses had gone into the fishing hole when the table was knocked over. It wasn't until after the Warden left, when he packed up his gear, that he noticed the glasses were gone. The claimant states that his fiancee tried to call the DNR office later that day and again on Sunday but that there was no answer. The claimant and his fiancee also went back to the lake to look for the glasses but could not find them. The claimant's fiancee called the Merrill Police Department the next Monday morning to find out whom to contact about the glasses. The DNR states that when the Warden approached the claimant he was outside the fishing shack. The Warden reached into the shelter to check the number of lines and inadvertently knocked over the makeshift table. The DNR states that the claimant was present and observed the incident, however, made not mention of the glasses at that time. The DNR also states that the Warden did not notice any glasses in the shelter. The Department believes that there is insufficient evidence to show that the eyeglasses were lost in the manner alleged by the claimant. No mention of the loss was made to the Department until several days later and the Warden cannot verify that the glasses were lost in that way or were even in the shelter. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

15. Roseann Rossing and Eric Mallon of Dodgeville, Wisconsin claim $1,150.32 for cost of repairing a vehicle allegedly damaged by a state employe. Claimant Rossing had purchased the vehicle for her son, Eric Mallon, and it was titled and insured in Rossing's name. The claimant's husband is a

Warden for the DNR. In the early morning hours of November 19, 1996, the claimant's husband was called to respond to a poaching complaint. In his haste to respond, Warden Rossing accidentally backed his state vehicle into Mallon's vehicle, which was parked behind him in the driveway. Warden Rossing submitted a vehicle incident report along with estimates for repair of Mallon's vehicle. The claimant states that after two years and repeated phone calls, she finally received a letter denying the claim. The claimant believes that since Warden Rossing was acting in his official capacity when the accident occurred, the state should reimburse her for the damage to Mallon's vehicle. The DNR recommends payment of this claim based on equitable grounds. A claim regarding this incident was filed with and denied by the DOA Bureau of State Risk Management. The reason for the denial was that the state is not liable for the damages because Warden Rossing damaged an automobile that he legally owns with his wife under Wisconsin marital property laws. Although the state assumes liability for damages to third parties caused by the negligence of its employes, the state does not indemnify its employes for damages caused by their negligence to property they own. The state is not legally liable for these damages. However, it is clear that the state would assume responsibility for damages to third parties which result under similar circumstances. There is no indication of fraud or gross negligence regarding this claim. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

16. David M. Rusch of Antigo, Wisconsin claims $1,511.75 for medical expenses allegedly related to an accident on state property. The claimant alleges that he was riding his bike in the DNR parking lot in Antigo, when he hit a pothole and fell. He states that he broke his collar bone and requests reimbursement for ambulance and hospital costs. The claimant states that he has no insurance coverage for his damages. The DNR recommends denial of this claim. This accident occurred on September 26, 1997, after working hours while the DNR offices were closed. The Department was first notified of the accident on July 15, 1998, when the claimant visited the Antigo Service Center to purchase a license. This was almost 10 months after the incident happened. Because of the delay, the DNR was unable to make a contemporaneous investigation and evaluation of the circumstances of the accident. The DNR has no direct knowledge of how the accident occurred or of any contributing factors, apart from the information provided by the claimant. In addition, the recreational immunity statute, s. 895.52, Stats., appears to apply in this situation. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

17. Mark Sweet of Madison, Wisconsin claims $413.14 for vehicle damage allegedly incurred while his vehicle was parked in a University of Wisconsin parking lot. On November 23, 1998, the claimant parked his vehicle in UW lot 91. The claimant alleges that when he returned to his vehicle, he found a note on his car indicating that one of the signs in the parking lot had blown over and damaged his car. He states that there were scratches on the right front fender, mirror, and right front door. He does not feel that he should have to file a claim with his insurance company for this damage and requests payment of the claim in full. He has a $100 insurance deductible. The UW recommends denial of this claim. It appears that high winds on the date of this incident blew parking signs onto the claimant's vehicle, however, the UW believes that this is not a situation involving the negligence of a state employe and that there is no equitable basis for payment of the claim. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

18. Beth Timm of Mt. Horeb, Wisconsin claims $84.80 for the cost to fix her wedding ring. The claimant states that on March 25, 1999, she was rearranging some furniture in her office and that her ring got caught on the furniture and was damaged. She does not have insurance coverage for this damage. The UW recommends denial of this claim. The claimant was apparently in the process of moving or rearranging office furniture herself. The UW does not believe this to be a situation involving negligence of a University employe, or that there is any equitable basis for payment. The claimant is not required to move furniture as part of her job description and apparently chose to do so herself. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

19. Brian L. Dain of Weyauwega, Wisconsin claims $1,577.45 for attorney fees related to a case of mistaken identity that led to his false arrest in 1998. The claimant was pulled over by a state trooper for having a loud muffler. The trooper told the claimant that there was a warrant for his arrest for a burglary charge. The claimant states that the warrant listed a Brian Dane with a last known address in Texas. The day after he was arrested, the District Attorney's office asked for $5,000 cash bond. The judge listened to the claimant's statement that he had never lived in Texas and lowered the bond to $750. The claimant hired an attorney to defend him. Upon investigation, the claimant's attorney found that the Brian Dain wanted for the burglary was 5'10"-6' tall with dark hair. The claimant is only 5'4" tall and has blond hair. The claimant states that the Winnebago DA assigned to the case was unavailable for the first hearing and asked to have the case delayed. However, the claimant's attorney argued successfully that the arrest had been incorrect and that the claimant was not the Brian Dain listed on the warrant. The case was dismissed. The claimant lost a nights work and spent $1,577.45 to defend himself. He requests reimbursement for his attorney fees. The Winnebago District Attorney's Office does not believe it acted in any way inappropriately. The DA's office received a referral from the Winnebago County Sheriff's Department and simply acted upon the information provided by the Sheriff's Department. The DA's office had no reason to question the information provided by the Sheriff's Department and as a result a warrant was issued for Brian L. Dain, DOB: 2-28-67. The Winnebago County DA's office does not believe the claimant has any claim against it. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

20. Alla Y. Likhterev of Whitefish Bay, Wisconsin claims $1,151.06 for damage to her vehicle, which was parked in the Winnebago Mental Health Institute, where she is employed. On November 10, 1998, there were high winds, which knocked down several tree branches, including one that fell on the claimant's vehicle and damaged her car. The claimant has a $1000 insurance deductible. She requests $899.06 repair costs and $252.00 car rental costs for a total claim of $1151.06. While the DHFS has no dispute with the claimant's assertion that her car was damaged as stated in her claim, there appears to be no negligence on the part of the DHFS. The DHFS believes that this was clearly an act of nature that could not be avoided. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

The Board concludes:

1. **The claims of the following claimants should be denied:**

   Robert Stobb
   Ronald J. Stanek
   Rosendale Farm Equipment, Inc.
   Gunnard Landers
   Daniel P. Droessler
   Dave Habeck
   Roseann Rossing and Eric Mallon
   David M. Rusch
   Mark Sweet
   Beth Timm
   Brian L. Dain
   Alla Y. Likhterev

2. **Payment of the following amounts to the following claimants is justified under s. 16.007, Stats:**

Dean Rahn	$2,929.50
David M. Stasik	$5,000.00
Rodney and Nadine Figueroa	$1,250.00
Randolph and Karen Sedlac	$3,500.00
Stanley J. Meyer	$4,000.00
Kevin J. Budden	$99.72
Bernice Northam	$977.46
Cory Prescott	$255.00

Dated at Madison, Wisconsin this 10 th day of August, 1999.

Alan Lee, Chair
Representative of the Attorney General

Edward D. Main, Secretary
Representative of the Secretary of Administration

Sheryl Albers
Assembly Finance Committee

Ladd Wiley
Representative of the Governor